

Dietz Development LLC v. Perez

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Posted December 14th, 2012 by DMLP Staff

Summary

Threat Type: Lawsuit Date: 10/31/2012

Status: Pending Location: Virginia

Disposition: Injunction Issued Verdict/Settlement Amount: n/a

Legal Claims: Defamation

Dietz Development is a construction contractor based in Washington, DC. According to the complaint, Jane Perez, a high school classmate of Dietz Development owner Christopher Dietz, hired Dietz Development to do work on Perez's home. Disagreements arose over the nature... [read full description](#)

Parties

Party Issuing Legal Threat: Party Receiving Legal Threat:

Dietz Development, LLC; Christopher Dietz Jane Perez

Type of Party: Type of Party:

Individual; Organization Individual

Location of Party: Location of Party:

District of Columbia Virginia

Legal Counsel: Legal Counsel:

Jonathan A. Nelson, Day & Johns PLLC James T. Bacon, Allred, Bacon, Halfhill & Young P.C.; Rebecca Glenberg, ACLU of Virginia; Paul Alan Levy, Public Citizen Litigation Group

Description

Dietz Development is a construction contractor based in Washington, DC. According to the complaint, Jane Perez, a high school classmate of Dietz Development owner Christopher Dietz, hired Dietz Development to do work on Perez's home. Disagreements arose over the nature of the work, which resulted in a lawsuit over unpaid invoices in July 2011. The lawsuit was dismissed after Dietz failed to timely file a bill of particulars (a more specified factual statement following a complaint) under Virginia court rules.

According to the complaint, on January 31, 2012, Perez posted a critical review of Dietz Development on Angie's List, including the following statements:

- "Dietz Development LLC was to perform: painting, refinish floors, electrical, plumbing and handyman work. I was instead left with damage to my home and work that had to be reaccomplished for thousands more than originally estimated."
- "My home was damaged; the 'work' had to be re-accomplished;"
- "I won on summary judgment (meaning that the case had no merit)."
- "he invoiced me for work not even performed and also sued me for work not even performed"
- "This is after filing my first ever police report when I found my jewelry missing and Dietz was the only one with a key."

Perez also posted substantially similar material on Yelp.com on February 6, 2012. On May 11, 2012, Perez filed similar statements with the Virginia Department of Professional and Occupational Regulation (DPOR).

On August 13, 2012, Perez posted further statements on Yelp.com regarding Dietz Development, including that the company "is not legitimate in lacking BBB Accreditation." On August 27, 2012, Perez posted again on Yelp.com, stating that Dietz had received sanctions from the DPOR and that "the Consumer Protection Agency and the Office of the Attorney General are also good sources who stated that Dietz has been sued by another client for 'unfinished work'."

Dietz Development filed a complaint in the Fairfax County Circuit Court in Virginia on October 31, 2012, alleging defamation based on the statements above and seeking \$750,000 in damages and an injunction removing the statements from these websites and preventing Perez from making similar statements in the future. Dietz denies all of the statements made above, and claims that (1) the invoices and lawsuit focused only on work that had been completed, (2) that he had returned the key immediately following termination of their relationship, (3) the Better Business Bureau has given Dietz Development an A+ ranking, (4) no sanctions were imposed by the DPOR, and (5) that Dietz has not been sued by other clients.

Also on October 31, 2012, Dietz filed a motion for preliminary injunction, arguing that an injunction should be issued here because the statements are defamatory per se, Dietz Development cannot "direct marketing at those who see" the material posted by Perez, and this information will cause the plaintiffs future monetary harm. Dietz conceded that "this would to a small extent reduce [Perez's] freedom of expression until there is a final hearing," but argued that Perez "has no financial interest in this speech, and she would not be prevented from pursuing any work opportunity or ongoing business concern." Dietz argued that an injunction favors the public interest because "[t]he public interest is met in the preservation of truthful communications and presentation of accurate information in making consumer choices."

Perez filed an answer on November 19, 2012. On December 4, 2012, Perez filed an opposition to the preliminary injunction. The opposition claimed that the suit filed against Perez is a "SLAPP" suit, and argued that an injunction should not be issued because the reviews are currently not accessible to a usual web search (because Perez removed the Yelp review and the Angie's List review is only viewable behind a paywall), issuing an injunction would harm Perez's right to free speech, and the statements are either true or published without the requisite degree of fault. Perez also stated that she intended to introduce evidence showing that Dietz was investigated and sanctioned by the DPOR, and that lawsuits and Attorney General investigations had been filed in the District of Columbia against Dietz Development.

On December 5, 2012, the court issued a brief order granting the preliminary injunction in part. The court ordered:

(1.) The Defendant shall remove any post that refers to the "loss of jewelry;" and

(2.) The Defendant shall modify any post that refers to "...'Summary Judgment' (meaning that the case had no merit)" to "...'Summary Judgment' (meaning the case was dismissed with prejudice in my favor)"; and

(3.) For any future publication, the Defendants shall comply with paragraphs (1) and (2) above.

Update:

On December 17, 2012, Perez filed a motion for reconsideration of the preliminary injunction, arguing that such an injunction constitutes a prior restraint.

On December 26, 2012, while the motion for reconsideration was pending, Perez filed a petition for review with the Supreme Court of Virginia under Virginia Code § 8.01-626. The petition argues that the injunction was an impermissible prior restraint, and violated principles of equity because injuries due to libel are considered to have an adequate remedy in monetary damages.

On December 28, 2012, the Supreme Court of Virginia issued a summary reversal of the injunction, finding both that the injunction failed to state the duration of the injunction under Virginia Code § 8.01-624, and that "the Preliminary Injunction was not justified and that the respondents have an adequate remedy at law."

Related Links:

- Paul Alan Levy, Virginia Supreme Court Reverses Preliminary Injunction Against Yelp Review, Public Citizen Consumer Law & Policy Blog, Jan. 2, 2013.
- Justin Jouvenal, Judge: Woman must stop making accusations in Yelp reviews, Washington Post, Dec. 5, 2012.
- John Clarke and Michael Zennie, Contractor sues Virginia woman for \$750,000 after she wrote scathing Yelp review, Daily Mail, Dec. 6, 2012.
- Ken White, Yelping About Bad Publicity, Popehat, Dec. 6, 2012.

Details

Website(s) Involved: Content Type(s):

- Yelp.com

•Angieslist.com

Text

Publication Medium: Subject Area(s):

Forum

Defamation

Prior Restraints

Court Information & Documents

Location of Filing/Threat: Source of Law:

Virginia Virginia

Court Name: Court Type:

Fairfax County Circuit Court, Virginia State

Case Number:

2012-16249

Relevant Documents:

Complaint (10-31-2012)

Motion for Preliminary Injunction (10-31-2012)

Answer (11-19-2012)

Opposition to Preliminary Injunction (12-04-2012)

Order on Preliminary Injunction (12-05-2012)

Motion for Reconsideration (12-17-2012)

Petition for Review (12-26-2012)

Summary Reversal